

Appl. No. : 10/671,179  
Filed : September 25, 2003

### REMARKS

The Applicants thank the Examiner for her consideration of the present application. By way of summary, Claims 2-20 were pending in this application. In the present amendment, the Applicants have amended Claims 2-4, 13-15 and 17. Accordingly, Claims 2-20 remain pending for consideration.

#### **Allowable Subject Matter - Claims 8-10 and 18**

The Applicants also thank the Examiner for the indication of allowable subject matter in Claims 8-10 and 18.

#### **Examiner's Statement of Reasons for Allowance**

The Applicants respectfully disagree with the Examiner's Statement of Reasons for Allowance to the extent that not all the claims include each of the structures or method steps recited in the Examiner's Statement. Also, the Applicants respectfully disagree with the Examiner's Statement to the extent that there is any implication that the patentability of any claim rests on the recitation of a single feature because it is the combination of features recited in each claim that makes that claim patentable.

#### **Rejection Of Claims 2-7, 11-17, 19 and 20 Under 35 U.S.C. § 102**

The Office Action rejected Claims 2-7, 11-17, 19 and 20 under 35 U.S.C. § 102 as being anticipated by U.S. patent no. 5,190,039, issued to Takeuchi et al., (the Takeuchi patent). The Applicants respectfully traverse this rejection because the Takeuchi patent fails to identically teach every element of Claims 2-7, 11-17, 19 and 20. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

Independent Claims 2 includes the limitations of "reading a primary input in communication with a first device responsive to said blood constituent" and "processing said primary input and said parameter input according to said relationship so as to determine said compensated measurement of said blood constituent." Independent Claim 3 includes the limitations of "a first input means in communication with a first device for determining blood constituent values" and "a processor means for deriving a compensated measurement of said blood constituent from said first input means." Independent Claims 4 and 17 include the limitations of "a primary input in communication with a first device configured to measure a first

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physiological property” and “a processor configured to output a compensated measurement of said first physiological property.”

Takeuchi discloses using an oxygen saturation measurement, a pH measurement, and a temperature measurement in order to determine an *oxygen partial pressure measurement*. Takeuchi, col. 4, lines 45-56. Takeuchi does not disclose compensating the oxygen saturation measurement, the pH measurement or the temperature measurement. Thus, Takeuchi fails to teach or suggest every element of Claims 2-4 and 17.

Claims 13-16 and 19 which depend from Claim 2, are believed to be patentable for the same reasons articulated above with respect to Claim 2, and because of the additional features recited therein.

Claim 20 which depends from Claim 3, is believed to be patentable for the same reasons articulated above with respect to Claim 3, and because of the additional features recited therein.

Claims 5-7 which depend from Claim 4, are believed to be patentable for the same reasons articulated above with respect to Claim 4, and because of the additional features recited therein.

#### **Request For Telephone Interview**

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicants' undersigned attorney of record hereby formally requests a telephone interview with the Examiner. The Applicants' attorney can be reached at (949) 721-2923 or at the number listed below.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 3/28/07

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